

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Khammesherma Smith,	)	
	)	
Plaintiff,	)	C.A. No. 3:22-02136-HMH-KFM
	)	
vs.	)	<b>OPINION &amp; ORDER</b>
	)	
Elaine Cooke, Sumter County Public	)	
Defender,	)	
	)	
Defendant.	)	

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Kevin F. McDonald made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina.<sup>1</sup> Plaintiff Khammesherma Smith (“Smith”), a state prisoner proceeding pro se, filed this action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. In his Report and Recommendation filed on August 9, 2022, Magistrate Judge McDonald recommended that this court (1) decline to give Smith leave to amend his complaint, (2) dismiss the action without prejudice and without issuance and service of process, and (3) designate the action as a “strike” pursuant to 28 U.S.C. § 1915(g). (R&R, generally, ECF No. 15.)

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<sup>1</sup> The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

On August 24, 2022, Smith timely filed objections to the Report and Recommendation.<sup>2</sup> (Objs., generally, ECF No. 17.) Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Smith's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge McDonald's Report and Recommendation and incorporates it herein.

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<sup>2</sup> Although objections to the Report were due by August 23, 2022, Smith was entitled to an additional three days to file because he was served by mail. Fed. R. Civ. P. 6(d). Smith is deemed to have filed his objections on August 24, 2022, when they were delivered to prison authorities for mailing to the court. See Houston v. Lack, 487 U.S. 266 (1988).

It is therefore

**ORDERED** that Smith's complaint, docket number 1, is dismissed without prejudice, without issuance and service of process, and without leave to amend. It is further

**ORDERED** that this action is designated as a "strike" pursuant to 28 U.S.C. § 1915(g).

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
Senior United States District Judge

Greenville, South Carolina  
August 31, 2022

**NOTICE OF RIGHT TO APPEAL**

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.